United Nations A/HRC/WG.6/22/MWI/1

General Assembly

Distr.: General
4 February 2015

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Twenty-second session
4–15 May 2015

National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*

Malawi

* The present document has been reproduced as received. Its content does not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations.

GE.15-02166 (E)

1502166

Please recycle

Introduction

1. Malawi was reviewed under the Universal Periodic Review in November 2010. The national Report for the second cycle was prepared by a National Task Force on Universal Periodic Review chaired by the Ministry of Justice and Constitutional Affairs. The Task Force is made up of Government Ministries, Departments and Agencies, Governance institutions and civil society organizations. The full list of members of the Task Force is attached hereto as **Annex 1**.

2. The seventy one (71) accepted recommendations in 2010 relate to the following areas: rights of women and gender equality; child rights; protection of vulnerable groups; international cooperation; the justice system; social economic development; national human rights institutions; and protection of human rights generally.

Key political developments since last review

3. Since 2010, Malawi has undergone two peaceful political transition processes. Firstly, in April 2012, following the death of the country's third President, the Vice President assumed the Presidency as Malawi's fourth President since independence. On 20th May 2014, Malawi held her first ever tripartite elections, electing a fifth post-independence President, Members of Parliament and Local Government Councillors.

Constitution

4. The general framework for human rights is created by the Constitution. The Constitution, where specific rights are contained, provides for a model which comprises the institutional and enforcement framework; *locus standi*; specific rights; limitations and restrictions; and derogation from rights. The Constitution also provides for Principles of National Policy which are 'directory in nature' but the courts are entitled to have recourse to them in interpreting and applying any provision of the Constitution or law in determining the validity of decisions of the Executive branch and in the interpretation of the Constitution.

5. The institutional and enforcement framework for human rights creates such institutions as the courts; the Office of the Ombudsman; the Human Rights Commission and other organs of Government. Other institutions such as the Law Commission which is mandated to review and reform all laws, including the Constitution, also have a significant role to play in promoting and protecting human rights. Since the Constitution renders discriminatory practices and their propagation criminally punishable, institutions such as the Malawi Police Service and the Prisons Service also have a role to play in the promotion, protection and fulfillment of human rights.

6. The Bill of Rights is complemented by an international human rights system which has several instruments at international, continental and regional levels. The major international human rights instruments include the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and Peoples Rights (ACHPR); the Protocol on the Rights of Women (AU Women's Protocol) and the SADC Protocol on Gender and Development. The Constitution sets out strict conditions for the limitation or restrictions for rights enshrined under the Constitution. It requires that the restriction or limitation should be prescribed by law of general application; is reasonable; does not negate the essential content of the right; is recognized

by international human rights standards; and is necessary in an open and democratic society.

7. The Constitution, in line with prominent international human rights instruments, permits derogation, limitation and restriction of human rights. Derogation, during a state of emergency with respect to some specified rights, such as freedom of expression, freedom of information, freedom of movement, freedom of assembly is permitted. The rights to be promptly brought before a court of law; and not to be detained without trial; are also subject to derogation. Such derogation however, has to be consistent with Malawi's obligations under international law. In addition, all derogation measures, such as the detention of suspects without trial are subject to applications and challenges in the High Court.

Human rights and governance institutions

8. Malawi has several institutions which play significant roles in the protection of human rights. These include the Human Rights Commission; the Ministry of Justice and Constitutional Affairs; the Office of the Ombudsman; and the Law Commission. Presently, the Ministry of Justice and Constitutional Affairs and the Human Rights Commission are leading the process of drafting a National Human Rights Action Plan with support from the United Nations Development Programme.

9. Since 2011, the Office of the Ombudsman has been involved in various activities in order to promote good administrative practices, rule of law, good governance and respect of human rights. The activities include public awareness; raising awareness among stakeholders on the functions and role of the Ombudsman; and consolidating Good Administrative Practices and Democratic Values. The office undertook institutional strengthening activities in order to address some of the challenges identified in the past. These are: institutional assessment; staff development; and recruitment.

10. The Ombudsman is a beneficiary of the Human Rights Support Project sponsored by United Nations Development Programme (UNDP). It is a 4 year project running from 2012 to 2016. The project aims at supporting national efforts to strengthen mechanisms and institutions to promote norms and good practices and foster stronger democratic accountability. One of the key activities under this project is the review of the Ombudsman Act with the aim of clarifying the jurisdiction and functions of the Ombudsman in order to increase its effectiveness.

11. The Law Commission is responsible for law reform. In carrying out this mandate, the Commission is required to undertake a participatory process of developing legislation. The Law Commission is also mandated to modernize laws by bringing them in accord with the Constitution, international conditions and norms. The Law Commission has always made effort to harmonize national legislation with its commitments undertaken at international level. For example, the Gender Equality Act with Convention on the Elimination of all forms of discrimination against women (CEDAW); the Child Care Protection and Justice Act with the Convention on the Rights of the Child (CRC); and the Disability Act with the Convention on the Rights of People with Disabilities (CRPD). The Prisons Act is under review by the Law Commission, a review process that is expected to be completed by end of 2014. The Legal Aid Bill was enacted into law in 2010. A notice operationalizing the Act was gazetted in May, 2013.

12. The process of review of the Witchcraft Act is still on-going and it is expected that the process will be completed by mid-2015 when the Commission will submit its findings and recommendations to Government for enactment and implementation. The Commission is also finalizing the review of abortion related laws to address maternal health and sexual and reproductive health rights matters related to access to safe abortion. The following Bills

drafted by the Commission during the reporting period are presently before Cabinet before being tabled in Parliament: Trafficking in Persons Bill; Immigration (Amendment) Bill; Penal Code (Amendment) Bill; Extradition (Amendment) Bill; Child Care, Protection and Justice (Amendment) Bill; Employment (Amendment) Bill; Public Service (Amendment) Bill; Legal Education and Legal Practitioners Bill; and the Adoption of Children Bill.

13. The Human Rights Commission has been in the forefront with human rights awareness programmes. According to the Democratic Governance Program Civic Education Follow-up Survey Report of 2012, 55.6% of female and 75.6% of males are aware of their rights. The national level of awareness has improved from 60 percent in 2006 to 64 percent in 2011 when the first similar exercise was conducted. The survey also indicated that more than half of the respondents were aware of the existence of the 10 out of the 14 institutions surveyed. The institutions surveyed were the Police; Prisons; Electoral Commission; traditional leaders; Human Rights Commission; Industrial Relations Court; Law Commission; Ombudsman; ACB; Magistrate Court; High Court; Supreme Court of Appeal; Media; and CSOs.

14. Most widely known institutions include the Malawi Police Service (97.1 percent); traditional leaders (93.3 percent); and the Electoral Commission (81.0 percent). Least known institutions included the Industrial Relations Court (29.0 percent); the Supreme Court of Appeal (40 percent); and the Law Commission (43.3 percent). The Human Rights Commission was known by 70% of the respondents. 56% believed the Commission is effective in its work and 65% indicated that it's relevant.

15. The Commission also produces annual Human Rights Reports. Unfortunately such reports are rarely discussed in Parliament. The Legal Affairs Committee of Parliament however discussed the Commission's 2011 Annual Report during its regular meeting. Parliament also discussed the Commission's Report on the investigations into the 20th July 2011 Demonstrations. There is need for Government to improve on implementation of the recommendations made by the Commission in its various reports. The Commission was also very active in disseminating the 2010 UPR recommendations to various stakeholders such as Members of Parliament, and in 2012 the Commission produced a midterm report on UPR. The Commission's funding has improved over the years from US$120,943 in the 2012/2013 and 2011/2012 financial years from US$ 111, 692 in the 2010/2011 financial year.

International human rights instruments

16. Malawi remains an active player of regional and international 1 human rights systems. As a party to most human rights instruments, Malawi has endeavored to clear a backlog of state party reports. In 2012, Malawi submitted her Initial Report to the Human Rights Committee on the ICCPR. The Report was discussed by the Committee and a Malawian delegation from 9th to 10th July, 2014. In 2013, Malawi also submitted her Initial Report to the African Commission on the African Charter on Human and People's Rights and the Protocol on the Rights of Women. In early 2014, Malawi submitted her periodic report on the CEDAW.. By the end of 2014, Malawi is expected to submit a combined third, fourth and fifth periodic report on the CRC; an initial report on the Optional Protocol to the CRC on the involvement of Children in Armed Conflict; and Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography as well as Initial Report to African Union on the African Charter on the Rights and Welfare of the Child (ACRWC). Presently, Malawi is also drafting reports on the Convention against Torture (CAT); ICESCR; and the CRPD.

17. In July 2013, the Special Rapporteur on the Right to Food Olivier De Schutter visited Malawi at the invitation of the Government. Following his visit, he made several recommendations to the Government which are currently being considered for implementation.

Protection of human rights

18. Since 2011, several steps have been taken to ensure the protection and enjoyment of human rights in Malawi. In relation to rights of persons with disabilities, Malawi adopted the Disability Act in 2012 which provides for equalization of opportunities for persons with disabilities through the promotion and protection of their rights; and provides for the establishment of a Disability Trust Fund, among other things. The main areas for equalization of opportunities include health care services; education and training; work and employment; political and public life; cultural, sporting and recreational activities and services; housing; economic empowerment; information and communication technologies; and research. The Trust Fund is established mainly to support the implementation of disability programmes and services.

19. In 2012, with support from UNICEF, Government conducted a situation analysis on children with disabilities to gather information intended to provide direction for effective development of programmes for them, following which, a National Work Plan on programmes for children with disabilities in Malawi was developed for implementation by the Government and different stakeholders. The plan, among others aims to strengthen coordination in the development and implementation of programmes that promote rights of all children with disabilities in Malawi.

20. In relation to persons in detention, several steps have been taken to ensure that they are kept in humane and decent living conditions. The Malawi Prisons Service has mainstreamed human rights in its system as a necessary measure to upholding total prohibition against torture through incorporation of human rights education within its newly developed prison basic training curriculum. The Department's Policy Statement 2 requires staff to "*observe human rights of prisoners and members of staff*". The Departmental Strategic Plan Document has "provision of humane treatment to inmates" as its strategic outcome.

21. Any officer found torturing, ill-treating or physically abusing a prisoner is punished accordingly. Where staff conduct amounts to crime, it is referred to Police for prosecution. As a measure to ensure effective recourse against any act of torture of those committed in detention centres, the Malawi Prisons Service has appointed a prisoners' social welfare officer for each and every Prison station and rolled out human rights open days in prisons where the Human Rights Commission and other non-state actors conduct human rights awareness activities to prisoners so that they take recourse to appropriate remedies once their rights are violated.

22. As measures to contain overcrowding in prison, the Prisons Service is in the process of formulating Parole Regulations. The Service has developed social report forms for profiling all prisoners on life sentence so that those qualifying should be commuted. A new Registry system based on pre-trial custody time limits has been developed to ensure the tracking of persons in custody and prevent their detention beyond the set custody time limits in the Criminal Procedure and Evidence Code.

23. The Malawi Police Service on its part conducts regular human rights lectures for police officers so that they refrain from acts of torture and to ensure that constitutional rights of suspects of crime are respected. The Internal Affairs Unit investigates all cases of human rights violations while the Service is still working on the establishment of the Police

Complaints Commission as provided in the Police Act. The Lay Visitors Scheme which comprises paralegal officers and local leaders in the vicinity of all Police Stations is fully operational. Members of the Scheme visit cells and inspect conditions of detention and attend to complaints of detainees. All complaints into the allegations of torture or physical abuse are thoroughly investigated; officers involved are usually interdicted to pave way for investigations. Special inquiry teams are sometimes instituted depending on the gravity of the matter with a view to bring to justice everyone suspected to have committed acts of torture and other human rights violations amounting to criminal offence. The Internal Affairs has so far handled 407 cases out of which 349 cases have been investigated.

Justice system

24. The Judiciary, in its endeavor to protect the Constitution and increase access to justice has taken several major steps. A Commercial Division of the High Court building is being constructed in Blantyre, Malawi's commercial hub. Magistrate Court buildings have been constructed or rehabilitated in six districts across the country. The Judiciary plans to have at least 40 High Court Judges. There are currently 10 Justices of Appeal and 24 Judges of the High Court. Two Justices of Appeal and 10 Judges of the High Court were appointed in the period between 2012 and 2014. In 2014, 57 third grade magistrates were appointed to serve in rural areas.

25. The Judiciary in conjunction with the Directorate of Public Prosecutions is in the process of installing a case management system in all its Registries with the aim of increasing efficiency in the way the Judiciary handles criminal case files and reducing the backlog of cases in the courts. A similar version of the case management system was installed in the Commercial Division's Blantyre Registry in 2012 with support from the Business Environment Strengthening Technical Assistance Project (BESTAP).

Child rights

26. The Child Care, Protection and Justice Act (CCPJA) of 2010 sets the foundation for a number of important children rights. The CCPJA, is the most comprehensive piece of legislation for children in Malawi. Currently, the Ministry responsible for the implementation of the Act, the Ministry of Gender, Children, Disability and Social Welfare (MOGCDSW) has developed subsidiary legislation to facilitate the smooth implementation of the CCPJA. It has also developed a costed implementation plan that will facilitate resource mobilization and implementation of the CCPJA.

27. The MOGCDSW is also in the process of simplifying the CCPJA into a user and child friendly version for easy understanding and implementation. It addition to this, Government is also developing a comprehensive policy on children. This comprehensive policy is being developed alongside a Plan of Action for vulnerable children that will operationalize the policy. The goal of the strategic objectives of the National Plan of Action for Vulnerable Children is that by the end of 2018, the survival, protection and development of 1,800,000 vulnerable children in Malawi has been improved through strengthened capacity of families, communities and Government and enhanced policy and legislation. In the realization of the plight of the children living and working on the streets, studies targeting children living and working on the streets were commissioned. The findings of the studies influenced the Ministry to develop a strategic plan for the rehabilitation and integration of children back to their communities and families. The Government also joined the Global Initiative of assessing the extent of violence against children and young women. Malawi conducted a Study on Violence against Children and Young women in 2014. The study revealed the existence of different forms of abuse in

homes and schools among boys and girls. In view of the study findings, the Government is currently developing a national response plan to address violence against children and young women across the country.

28. Child marriage in Malawi is largely attributed to harmful cultural practices, lack of age- appropriate reproductive health information and knowledge, self- efficacy, utilization of services and inadequate legal protection. In view of this, Government plans to increase age of marriage through enactment of Marriage, Divorce and Family Relations Bill. It is envisaged that this process will be followed by the amendments of the Constitution; Penal Code; and Child Care Protection and Justice Act to ensure harmonisation on age of marriage in Malawi. Some civil society organisations have been implementing programmes against child marriage from 2011 to 2015. The programmes largely focus on legislative reform; girls' empowerment; and community awareness using theory of change approach.

29. Malawi is also part of the African Commission campaign to end child marriage and plans are underway to launch the initiative which will among other things ensure support to policy action, remove barriers to law enforcement, increase the capacity of non-state actors to undertake evidence based policy advocacy on ending child marriage. Malawi will also be launching a three years project that targets three districts with high cases of child marriages. The project aims at improving access and quality education for girls. The specific objectives are:

(a) Girls and boys in targeted schools are well nourished and able to stay in school;

(b) Increased access to second chance education for both in and out of school girls;

(c) Quality integrated youth friendly services, resources and structures, addressing CSE, SRHR, HIV/AIDS and GBV in place for both in and out of school girls;

(d) Reduction of violence against girls in targeted schools and communities and effective referral pathways in place;

(e) Teacher attitudes and skills are improved/enhanced to effectively deliver life skills based and gender responsive methodologies;

(f) Adolescent girls are informed and empowered to demand SRHR services, participate and take on leadership positions within the school and the community;

(g) Empowered and committed communities will value quality education for all children, especially girls.

30. In 2010, the MoGCDSW introduced the case management approach. In 2012, the MoGCDSW published the Child Protection Case Management Framework. Community Child Protection Workers and District Social Welfare officers have been trained using the case management framework. This approach has generally improved children's access to multiple services through better referrals and follows ups promoted in the case management framework.

31. There are currently various programmes and policies that support the rights of the child. These programmes and policies are implemented by different sectors related to children issues such as health, education, agriculture, social welfare, security services, among others. Some of the current developments alongside the existing policies and programmes are:

(a) Besides the Early Childhood Development (ECD) Policy: Government has developed guidelines for the caregivers in identifying and supporting children with special

needs has, and developed comprehensive training manual for ECD that includes issues of child rights and women rights;

(b) In respect to Orphans and other Vulnerable Children Policy: Government is developing a National Plan of Action for Vulnerable Children. Government has also developed the Minimum Standards for Quality Improvement in the Delivery of Services to Orphans and other vulnerable children. Currently, Government is developing guidelines for caregivers for the operation of Children Corners in Malawi;

(c) In respect to child protection and rehabilitation services: Government are establishing one stop centres in central hospitals and district hospitals. The purpose it to ensure that survivors of abuse are provided appropriate services without further victimization;

(d) The country continues to implement other child rights promotion policies such as Community Integrated Management of Childhood Illnesses (C-IMCI) Policy; Accelerated Childhood Survival Programme; National HIV and AIDS Policy; Prevention of Mother To Child Transmission (PMTCT) Programme; National Nutrition Policy and Strategic Plan; School Feeding Programme; Nutrition Rehabilitation Units and Therapeutic Feeding.

32. Steps have been taken to deal with the problem of child labour. The Ministry of Labour and Manpower Development developed the National Action Plan (NAP) to provide direction for progressive elimination of child labour from 2009 to 2016. The NAP is linked to legislation, strategies, policies and international instruments on children such as the proposed Trafficking in Persons Bill; Malawi Growth and Development Strategy (MGDS) which is an overarching operational medium-term development strategy for Malawi; National Education Sector Plan (NESP); Agriculture and Food Security Policy; and the National HIV and AIDS Policy; and Malawi Decent Work Country Program (M-DWCP).

33. The Strategic Objectives of the National Action Plan (NAP) include creation of a conducive legal and policy environment through mainstreaming child labour issues in national and sectoral social and economic policies, legislation and programmes by 2014; building and strengthening the technical, institutional and human resource capacity of the stakeholders dealing with child labour; directly combating child labour through the prevention, withdrawal, rehabilitation and re-integration of working children and their families. For child labour elimination, the Government and the other stakeholders have undertaken initiatives that include, prevention through family income security; withdrawal through identification of children below minimum age and in hazardous work; rehabilitation to prevent them from going back to work; protection through risk management; awareness raising campaigns among the society; child labour inspections to spot out the working children; advocacy for change of attitude on child labour; prosecutions; commemoration of child labour open days; setting up Community Child Labour Committees (CCLCs) where they are not in place; where they are available make them live; and formulate the Laws and Policies for enforcement including the by-laws.

34. The Malawi Police Service has developed the Child Protection Policy which includes detailed guidelines for police officers to follow when handling cases involving children both as victims and offenders. One of the objectives of the policy is to ensure promotion and protection of children's rights including victims of trafficking regardless of their circumstances. Police, through the Community Policing Branch, also conducts awareness campaigns on child rights throughout Malawi targeting areas where children are being exploited and trafficked. Under Community Policing, 71 Police Victim Support Units has been established. Police continues providing both in-service and pre-service training for its officers in child protection.

35. At the Ministry of Education, a number of important developments have been undertaken to ensure that children rights are protected and promoted. The curriculum for primary education has life skills component that empowers the school children to protect themselves against any forms of violations to their rights. The sector has also conducted studies in both primary and secondary school which assessed the form of violence taking place and how success forms of violence can be mitigated. A Special Needs Directorate has been set up in the Ministry to specifically deal with special needs school children.

Rights of women

36. In February, 2013, the National Assembly passed the Gender Equality Act. The Gender Equality Act has provided for protection of women from harmful practices; against sexual harassment and sex discrimination. The Gender Equality Act has defined the term "discrimination against women" where a person discriminates against another person if –

(a) on the grounds of sex, he or she treats the other person less favourably than he or she would treat a person of his or her opposite sex; or

(b) he or she applies to the other person an exclusion, distinction or restriction which applies or would apply equally to both sexes but –

(i) which is such that the proportion of one sex who can comply with it is considerably smaller than the proportion of the opposite sex who can comply with it;

(ii) which he or she cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and

(iii) which is to the detriment of the other person because he or she cannot comply with it, with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights and fundamental freedoms of that person.

37. The Gender Equality Act also prohibits "harmful practices" defined as a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to undermine the dignity, health or liberty of any person; or result in physical, sexual, emotional, or psychological harm to any person. The Marriage, Divorce and Family Relations Bill has not yet been tabled in Parliament because of the outstanding issues including the prohibition of polygamy and the minimum age for marriage. The Bill is before Cabinet.

38. Multiple training sessions have been conducted on gender related laws including the Gender Equality Act for Magistrates, Police prosecutors, and Social Welfare officers. So far, the MOGCDSW has trained 65 officers from 13 Gender Equality and Women Empowerment Programme implementing districts.

39. The proposed Trafficking in Persons Bill is based on the UN Convention against Transnational Organized Crime whose Protocol on preventing and suppressing trafficking in persons, specifically identifies women and children as being most vulnerable. In the proposed Bill, both children and women are given special protection from trafficking.

40. During the Reporting period, the MOGCDSW has been carrying out the following programmes: Gender Equality and Women Empowerment (GEWE) from 2012 to 2015; National Response to Combat Gender Based Violence which ran from 2008 to 2013 and is currently under review; Increasing Women Representation in Parliament and Local Government dubbed the "50:50 Campaign" from 2009 to 2014; Women, Girls and HIV and AIDS from 2005 to 2012 (expired); Gender Mainstreaming as an on-going semi-permanent programme; and the Economic Empowerment Programme. The Government has reviewed but not yet adopted the National Gender Policy. Although the Gender Policy has not been

formally adopted by Government, it continues to guide programmes in the promotion of women rights including the fight against discrimination and gender based violence. Following the May 20, 2014 Tripartite General Elections, the number of female Members of Parliament has reduced to 32 representing 16.5% and a reduction by 15. Only 56 female Councillors were elected out of a total of 462 Councillors.

41. In an effort to improve coordination for the promotion of women and children rights, the Gender, Children, Youth and Sports Sector Strategy has been developed. The strategy operationalizes the priorities under Theme Six of the MGDS II on crosscutting issues and Sub-theme One on Gender and Priority Area Eight on Child Development, Youth Development and Empowerment. Child Development, Youth Development and Empowerment are also covered under Theme Two on Social Development.

42. The National Social Support Policy (NSSP) was developed as a medium term policy aimed at facilitating implementation of programmes that will provide income or consumption transfers to the poor; protect the vulnerable against livelihood risks; and enhance the rights and social status of the marginalized and vulnerable groups such as the elderly; the chronically sick; orphans and other vulnerable children; persons with disabilities; and destitute families that include women.

43. The country has made efforts to eliminate harmful practices through campaigns against violence during the commemoration of international days against Gender Based Violence such as International Women's Day (8th March every year) and 16 Days of Activism against Gender Based Violence from 25th November to 10th December, every year.

44. Initiatives for the promotion of girl's education in Malawi are ongoing. Government has introduced equality in numbers of learners on recruitment into primary, secondary and tertiary levels of education; the Re-Admission policy in order to allow pregnant schoolgirls to return to school after delivery.

45. The Social Cash Transfer Programme (SCTP) was initiated in 2006 with the aim of providing small cash grants to ultra-poor households without any able-bodied adult household members (labour constrained households). It is currently operational in 9 districts with plans to scale up to all the 28 districts. The objectives of the SCTP are to reduce extreme poverty and hunger; increase school enrolment and attendance; and improve nutrition and health, well-being and protection of children in beneficiary households.

Social economic development

46. As Government's medium term plan for 2011-2016, the MGDS II seeks "to create wealth through sustainable economic growth and infrastructure development as a means of achieving poverty reduction". To achieve this objective, the MGDS II has identified six broad thematic areas namely: (a) Sustainable Economic Growth; (b) Social Development; (c) Social Support and Disaster Risk Management; (d) Infrastructure Development; (e) Improved Governance; and (f) Gender and Capacity Development. Within these six thematic areas, the MGDS II has isolated nine key priority areas (KPAs), namely: Agriculture and Food Security; Transport Infrastructure and Nsanje World Inland Port; Energy, Industrial Development, Mining and Tourism; Education, Science and Technology; Public Health, Sanitation, Malaria and HIV and AIDS Management; Integrated Rural Development; Green Belt Irrigation and Water Development; Child Development, Youth Development and Empowerment; and Climate Change, Natural Resources and Environmental Management. Subsequent to the approval of the MGDS II in April 2012, the Government undertook a re-prioritization of key areas of intervention and identified

Infrastructure (Energy and Transport); Export Diversification (Agriculture, Mining); Private Sector Development; and Tourism as short term key drivers of growth.

47. In 2012 the Ministry of Agriculture launched the Agriculture Sector Gender, HIV and AIDS Strategy for the period 2012 to 2017. The goal of this Strategy is to contribute to sustainable and equitable food, nutrition and income security at national, community and household level through the empowerment of women and other vulnerable gender categories. The strategy has 3 pillars and these are: Quality participation of women and other vulnerable gender categories in Agriculture Sector Wide Approach (ASWAp) focus areas and key support services; Gender, HIV and AIDS responsive technology generation and dissemination and Effective coordination, capacity building and resource mobilization. The strategy was developed through a national participatory process, which involved consultations with a wide range of stakeholders at all levels. The main guiding documents for the strategy are: ASWAp; the draft National Gender Policy; and the National HIV and AIDS Action Framework. It is also aligned with the objectives of the Millennium Development Goals and the Malawi Growth and Development Strategy.

48. In the agriculture sector, women provide 70 percent of the workforce and produce 80 percent of food for home consumption. However, there are disparities between men and women in their access to and control over agriculture production resources such as land, credit, extension services, farm implements and inputs. Furthermore, the participation of women in decision-making in the sector is also limited as the process is dominated by men. Women, especially widows, are most affected as they generally experience agricultural related property-grabbing including land, oxen, ploughs and inputs. They also have limited access to agricultural markets due to lack of transport, technology and price negotiation skills. Malawi continues to experience severe HIV and AIDS epidemic with prevalence rates among sexually active adults relatively higher among females at 12.9 percent than males at 8.1 percent. The effects of HIV and AIDS on agriculture include loss of persons in their most economically productive years due to death which affects both the quality and quantity of agricultural labour. AIDS related illnesses and deaths have resulted in loss of assets, income, intergenerational and technical skills, knowledge and practices thereby negatively affecting agriculture production and productivity.

49. In 2010 Malawi progress report showed that the country was on course to achieve five of the eight Millennium Development Goals. These are eradication of extreme poverty and hunger, reduction of child mortality rate, combating HIV, AIDS, Malaria and other diseases, ensure environmental sustainability, and develop global partnership for development. Revised 2012 to 2014 indicators show that Malawi has got mixed results in terms of progress in achieving MDGs and is on course to achieve possibly half of the eight millennium development goals and these are: reducing child mortality; combating HIV and AIDS, malaria and other diseases; ensuring environmental sustainability; and developing global partnership for development.

HIV and AIDS

50. In December, 2011, Government adopted the National HIV and AIDS Strategic Plan (NSP), 2011–2016 as a follow-up on the NAF, 2004–2009, which was extended to 2012. The NSP seeks to provide guidance to the national response to the HIV and AIDS epidemic by building on the gains of the previous policy instruments. The NSP also aims at reducing new infections by 20% through the reduction of child infections by 30% and adult infections by 15%. The NSP aims at reducing AIDS-related deaths by 8% generally and to reduce child AIDS-related deaths by 50%.

51. The NSP also aims at reducing new infections among people in the 15–24 years age group. The NSP has five priority areas of (a) prevention of primary and secondary transmission of HIV; (b) improvement in the quality of treatment, care and support services for PLHIV; (c) reduction of vulnerability to HIV infection among various population groups; (d) strengthening multi-sectoral and multi-disciplinary coordination and implementation of HIV and AIDS programmes; and (e) strengthening monitoring and evaluation of the national HIV and AIDS response.

Sexual and reproductive health

52. Government is committed to offer comprehensive sexual and reproductive health and rights services in tandem with the international, regional and national policies such as the 1994 International Conference on Population and Development (ICPD) Programme of Action; ICPD + 10; Millennium Development Goals (MDGs); African Union Sexual and Reproductive Health Rights (SRHR) Policy Guidelines; the African Union Health Strategy; the Southern Africa Development Community Health Strategy; and the Maputo Plan of Action. Other national policies are the Malawi Reproductive Health Strategy 2006-2010; the Malawi Reproductive Health Service Delivery Guidelines; the Road Map for Accelerating the Reduction of Maternal and Neonatal Mortality and Morbidity in Malawi; the Malawi Accelerated Child Survival and Development Strategy; the National Gender Policy; and the Malawi Population Policy.

53. From 2009, Government embarked on a National Safe Motherhood Programme which aims at mainly at reducing maternal mortality ratio which stood at 675 per 100,000 births. In 2013, that as a result of the Presidential Initiative on safe motherhood, the maternal mortality ratio has significantly reduced to 460 per 100,000 live births. In 2012, the Presidential Initiative encouraged Traditional Leaders to take their role in preventing maternal mortality and discourage the use of Traditional Birth Attendants (TBAs).

54. Government is reviewing abortion related laws including criminalization of abortion through a very consultative process with the aim of coming up with legislation that will address issues of unsafe abortion, maternal mortality and sexual and reproductive health.

Cooperation

55. Government has formed a number of partnerships with local and international partners who provide financial and technical assistance in the execution of its policies and programmes. These partners include the United Nations and its bodies which offer support depending on their mandate. These bodies include the United Nations Development Programme (UNDP); United Nations Children's Fund (UNICEF); United Nations Population Fund (UNFPA); and United Nations High Commissioner for Refugees (UNHCR). Government also works with the African Union and its various bodies in various areas of cooperation. At regional level, the partnership between Government and the Southern African Development Community (SADC) in order to achieve its development agenda.

56. Government also benefits from its bilateral relations with other Governments, key among which are the United Kingdom; the United States of America; the European Union; Canada; Germany; Australia; South Africa; and many more. Government has a broad working relationship with civil society organizations. As already indicated above, civil society organizations took part in the compilation of this Report and this process is followed in the compilation of all State Party Reports for Malawi.

Annex

National task force on Universal Periodic Review

1. Ministry of Justice and Constitutional Affairs;
2. Office of the President and Cabinet;
3. Ministry of Foreign Affairs and International Cooperation;
4. Ministry of Education;
5. Ministry of Agriculture and Food Security;
6. Ministry of Finance and Economic Planning and Development;
7. Ministry of Home Affairs;
8. Ministry of Gender, Children, Disabilities and Social Welfare;
9. Ministry of Labour and Manpower Development;
10. Ministry of Health;
11. Ministry of Lands and Urban Development;
12. The Judiciary;
13. The National Assembly;
14. Malawi Police Service;
15. Malawi Prisons Service;
16. National Statistical Office;
17. Human Rights Commission;
18. Law Commission;
19. Office of the Ombudsman;
20. Anti-Corruption Bureau;
21. Public Affairs Committee;
22. Centre for Human Rights and Rehabilitation;
23. Malawi Law Society;
24. Centre for the Development of People;
25. Catholic Commission for Justice and Peace;
26. Ipas;
27. Centre for Human Rights Education, Advice and Assistance;
28. Paralegal Advisory Service.

United Nations A/HRC/WG.6/22/MWI/2

General Assembly

Distr.: General
23 February 2015

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Twenty-second session
4–15 May 2015

Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Malawi

The present report is a compilation of the information contained in reports of the treaty bodies and special procedures — including observations and comments by the State concerned —, in reports of the United Nations High Commissioner for Human Rights, and in other relevant official United Nations documents. It is presented in a summarized manner owing to word-limit constraints. For the full texts, please refer to the documents referenced. The report does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review, and developments during that period.

GE.15-03440 (E)
1503440

Please recycle

I. Background and framework

A. Scope of international obligations[1]

International human rights treaties[2]

	Status during previous cycle	*Action after review*	*Not ratified not accepted*
Ratification, accession or succession	ICERD (1996)	OP-CRC-AC (2010)	ICCPR-OP 2
	ICESCR (1993)		OP-CAT
	ICCPR (1993)		ICRMW
	CEDAW (1987)		ICPPED
	CAT (1996)		
	CRC (1991)		
	OP-CRC-SC (2009)		
	CRPD (2009)		
Reservations and or declarations		OP-CRC-AC (declaration: art. 3, para. 2: minimum age of recruitment: 18 years, 2010)	
Complaints procedures, inquiries and urgent action[3]	ICCPR-OP 1 (1996)		ICERD, art. 14
	CAT, art. 20 (1996)		OP-ICESCR
			ICCPR, art. 41
			OP-CEDAW (signature, 2000) CAT, arts. 21 and 22
			OP-CRC-IC
			ICRMW
			OP-CRPD
			ICPPED

Other main relevant international instruments

Status during previous cycle	*Action after review*	*Not ratified*
Conventions on refugees and stateless persons[4]		Convention on the Prevention and Punishment of the Crime of Genocide
Geneva Conventions of 12 August 1949 and Additional Protocols I and II[5]		ILO Conventions Nos. 169 and 189[8]
ILO fundamental conventions[6]		Additional Protocol III to the 1949 Geneva Conventions[9]
Rome Statute of the International Criminal Court		UNESCO Convention against Discrimination in Education
Palermo Protocol[7]		

1. In 2014, the Human Rights Committee (HR Committee) requested Malawi to consider acceding to ICCPR-OP 2.[10]

2. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that the reservations to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol were a major obstacle to refugees' ability to enjoy their rights, access services and attain self-reliance.[11] UNHCR recommended that Malawi withdraw the reservations[12] and accede to the 1961 Convention on the Reduction of Statelessness.[13]

3. The United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that Malawi was not a party to the 1960 UNESCO Convention against Discrimination in Education.[14]

B. Constitutional and legislative framework

4. The United Nations county team (UNCT) stated that during the universal periodic review on 1 November 2010 (2010 review),[15] Malawi had expressed support for recommendation 102.5 to amend or repeal, as a matter of urgency, the Witchcraft Act,[16] but that the Witchcraft Act was still under review by the Law Commission.[17] Malawi had also expressed support for recommendation 102.4, to ensure that, inter alia, the Marriage, Divorce and Family Relations Bill entered into force as soon as possible.[18] However, that Bill had yet to be enacted into law.[19]

5. UNCT called for the enactment of the Marriage and Divorce Family Relations Bill, with provisions for the full and free consent of both partners to a marriage, and for the minimum age of marriage to be 18 years.[20] HR Committee urged Malawi to expedite the enactment of the bill and to ensure that it set the minimum age of marriage in accordance with international standards.[21]

6. The Special Rapporteur on the right to food recommended that Malawi establish a framework law on the right to food, building on the draft food security bill, through a consultative process with relevant stakeholders.[22]

7. UNHCR recommended the enactment of the draft refugee law, pending since 2011.[23]

8. UNESCO stated that defamation was a criminal offence.[24] It recommended that defamation be decriminalized and incorporated into the Civil Code.[25]

9. HR Committee expressed concern about delays in the adoption of the Access to Information Bill and about the potential of the draft E-Bill to limit freedom of expression . It stated that Malawi should expedite the adoption of the bill and ensure that its provisions and those of the E-Bill were in conformity with ICCPR.[26]

10. HR Committee was concerned that the provisions of ICCPR were not given full effect in Malawi's legislation, and urged Malawi to give them full effect in its legislation.[27]

C. Institutional and human rights infrastructure and policy measures

Status of national human rights institutions[28]

National human rights institution	*Status during previous cycle*	*Status during present cycle*[29]
Human Rights Commission	A (2007)	A (re-accreditation deferred to March 2015)[30]

11. HR Committee was concerned that the Malawi Human Rights Commission did not function independently and was not adequately funded. It was also concerned at the

Commission's reluctance to engage on lesbian, gay, bisexual, transgender and intersex (LGBTI) issues. It stated that Malawi should amend the Human Rights Commission Act to ensure that the Commission enjoyed full independence; provide the Commission with adequate resources; and establish mechanisms for the implementation of the Commission's recommendations. Furthermore, the Commission should fully comply with its mandate and engage on all human rights issues, including those related to the rights of LGBTI persons.[11]

12. In 2014, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation noted the proposed amendments to the Human Rights Commission Act and that the Government intended to have the proposed amendments considered in Parliament during its February 2015 session. The draft bill would address all of the Sub-Committee's previous recommendations.[12]

13. The Special Rapporteur on the right to food recommended that Malawi improve mechanisms and methodologies for the collection of adequately disaggregated data on poverty and food insecurity, with a view to improving the accuracy and reliability of different national surveys.[13]

14. UNCT stated that recommendation 102.11, which had been made during the 2010 review, relating to the adoption of a national action plan, legislation and policies for the protection of children's rights, was not fully implemented.[14] A national plan of action for vulnerable children (2014–2018), was in the process of being finalized, but the policy and national plan of action for children, mentioned in the recommendation, had yet to be finalized and implemented.[15]

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies[16]

1. Reporting status

Treaty body	*Concluding observations included in previous review*	*Latest report submitted since previous review*	*Latest concluding observations*	*Reporting status*
CERD	August 2003	--	--	Initial report overdue since 1997
CESCR	--	--	--	Initial report overdue since 1996
HR Committee	--	2012	November 2011 (provisional, in the absence of a report); July 2014	Second report due in 2018
CEDAW	February 2010	2014	--	Seventh report pending consideration in 2015
CAT	--	--	--	Initial report overdue since 1997
CRC	January 2009	--	--	Third to fifth reports overdue since 2013; initial OP-CRC-SC report overdue since 2011; initial OP-CRC-AC report overdue since 2012
CRPD	--	--	--	Initial report overdue since 2011

2. Responses to specific follow-up requests by treaty bodies

Concluding observations

Treaty body	*Due in*	*Subject matter*	*Submitted in*
HR Committee	2015	Extrajudicial killings; torture; sexual abuse of children; and forced and child marriages[37]	2013;[39] additional information requested[40]
CEDAW	2012	Enactment of outstanding bills on gender equality; maternal mortality and abortion[38]	

B. Cooperation with special procedures[41]

	Status during previous cycle	*Current status*
Standing invitation	No	No
Visits undertaken	--	Food (2013)
Visits agreed to in principle	--	Freedom of peaceful assembly and association
Visits requested	Food	Extreme poverty
	Adequate housing	Human rights defenders
Responses to letters of allegation and urgent appeals	During the period under review, nine communications were sent. The Government replied to four communications.	

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

15. UNCT stated that gender disparities existed in areas such as education, agriculture, trade, political participation, health and employment. This resulted in gender inequalities in the division of power, participation and control over resources and decision-making processes, and thus women remained disadvantaged in the socioeconomic, legal and political arenas.[42]

16. The Special Rapporteur on the right to food indicated that women were among the ultra-poor and faced specific impediments to their enjoyment of the right to food. Given their traditional role in the family, women, in most cases, shouldered an unequal share of household responsibilities. Moreover, women constituted 70 per cent of the agricultural workforce, yet they were unequal to men in decision-making and control over production resources and land.[43] The Special Rapporteur recommended that Malawi strengthen the integration of a gender perspective into food and nutrition security strategies and programmes.[44]

17. While welcoming the adoption of the Gender Equality Act, HR Committee regretted that there were still laws in force which discriminated against women. It was particularly

concerned that, by law, women were denied rights equal to those with men with respect to nationality. It stated that Malawi should, inter alia, allocate adequate financial and human resources to the implementation of the Gender Equality Act and amend all laws that still discriminated against women, in particular sections 9 and 16 of the Citizenship Act, so as to ensure that nationality provisions applied equally to men and women.[45]

18. UNCT stated that the Gender Equality Act (2013), which came into force in April 2014, prohibited harmful traditional practices, gender-based violence, sex discrimination and sexual harassment. It provided for the participation of women in decision-making positions in all spheres of life, especially public and political life, and equality of access to education and training, and recognized sexual and reproductive health rights. The Act proposed the introduction of quotas in education, employment and politics to ensure the visibility and substantive participation of women in those spheres. Efforts were in progress to develop implementation guidelines for the Act.[46]

19. HR Committee was concerned that the draft bill on HIV/AIDS contained provisions which were not in conformity with ICCPR, such as those allowing a health service provider to disclose a person's HIV status and providing for compulsory testing in certain circumstances. It stated that Malawi should review the draft bill on HIV/AIDS to ensure full compliance with ICCPR and international standards, and expedite its adoption.[47]

20. UNCT stated that women's experience of HIV and AIDS accentuated gender disparities and affected women's roles at home and work and in society. The psychosocial and socioeconomic dimensions of HIV and AIDS were different for women and men because of women's unequal status in the community. Gender inequality was a key variable in the high incidence of HIV and AIDS transmission among women. Vulnerability to HIV and AIDS was increased by a lack of respect for women's sexual and reproductive health rights. Women's subordinate position in society restricted the possibilities for women to take control of their lives to combat HIV and AIDS, leave a high-risk relationship or have adequate access to quality health care.[48]

B. Right to life, liberty and security of the person

21. While welcoming the de facto moratorium on executions, HR Committee urged Malawi to consider abolishing the death penalty and to review the Penal Code to ensure that, if imposed, the death penalty was applicable only to the most serious crimes. It also stated that Malawi should provide adequate funds to resentence prisoners who had received the mandatory death penalty, and ensure the right to seek pardon or commutation of the death sentence.[49]

22. HR Committee was concerned at the high number of reported cases of torture by law enforcement officers, and that the law on the use of firearms by police officers did not comply with international standards. It urged Malawi to investigate all cases of torture, prosecute alleged perpetrators and compensate victims, and to ensure that the Police Act complied with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers.[50]

23. The Working Group on Arbitrary Detention noted that four detainees had been kept in detention without trial for long periods and without minimum due process guarantees, including being promptly informed of the charges against them, and their rights to access legal counsel, to be presented before a judge and to be tried within a reasonable time.[51] It concluded that their detention was arbitrary, in contravention of articles 9 and 14 of ICCPR.[52]

24. UNCT noted that during the 2010 review, Malawi had accepted a recommendation to, inter alia, promptly establish a Police Complaints Commission.[53] UNCT stated that an

Independent Police Complaints Commission had been established, but was yet to be operational.[54] Also, the Malawi Police Service had an Internal Affairs Unit with the mandate to investigate complaints against police officers, including violations of human rights, but the Unit was understaffed.[55]

25. HR Committee was concerned about the conditions of detention in prisons. It stated that Malawi should, inter alia, expedite the adoption of the Prison Act; strengthen the capacity and independence of the Prison Inspectorate; establish mechanisms to consistently consider the Inspectorate's recommendations; and facilitate complaints from detainees.[56]

26. The Special Rapporteur on the right to food visited Maula Prison in the light of a 2009 High Court ruling concerning problems of severe overcrowding and inadequate food in prisons.[57] He mentioned that the Prison Service was only able to provide prisoners with one daily meal and that there were days when prisoners received no food.[58] He recommended that Malawi take immediate measures to ensure adequate food in prisons, including by raising current minimum standards in the new Prison Act.[59]

27. HR Committee was concerned that domestic violence remained widespread. It urged Malawi to expedite the review of the Prevention of Domestic Violence Act, explicitly criminalize spousal rape, bring alleged perpetrators to justice and strengthen the mechanisms to protect, compensate, rehabilitate and reintegrate victims.[60]

28. UNCT stated that violence against women and girls was widespread. Gender-based violence was rooted in socioeconomic and cultural factors at the household and community levels, including social-cultural and economic inequalities between men and women and the lack of empowerment of women. Sexual abuse of girls by teachers in schools, wife inheritance and sexual cleansing of widows were some of the aspects of gender-related violence. UNCT underscored the need for more gender-sensitive legislation and stronger enforcement of existing laws, greater support to victims and increased public awareness and promotion of gender equality.[61]

29. HR Committee was concerned about the persistence of traditional practices targeting widows, and urged explicit criminalization of "widow inheritance" and any other harmful traditional practices that discriminated against women and girls.[62]

30. HR Committee was concerned about reports on the prevalence of the practice of female genital mutilation, and urged Malawi to explicitly criminalize that practice.[63]

31. HR Committee was concerned about the persistent practice of forced and child marriages. It urged Malawi to expedite the adoption of the Marriage, Divorce and Family Relations Bill and to ensure that forced and child marriages were explicitly criminalized.[64]

32. HR Committee was concerned about the practice of ceremonies for girls which, inter alia, led to sexual abuse. It stated that Malawi should explicitly criminalize the practice of "sexual cleansing" rituals and ceremonies which led to sexual abuse, and to adopt a strategy to address such practices.[65]

33. HR Committee was concerned about the high prevalence of sexual abuse of children and that the Penal Code did not criminalize all forms of sexual abuse of boys. It urged Malawi to amend the Penal Code to criminalize all forms of sexual abuse of children, regardless of the sex of the child, bring perpetrators to justice and rehabilitate and compensate the victims.[66]

34. HR Committee was concerned about the high prevalence of child labour. It stated that Malawi should eliminate child labour by allocating adequate resources to the effective implementation of laws and relevant treaties.[67] Malawi should also develop a policy to reduce and prevent the phenomena of children in street situations.[68]

35. UNCT noted that, during the 2010 review, Malawi had accepted recommendations 102.12, 102.31, 102.32 and 102.33, all of which related, inter alia, to human trafficking. It stated that although the Child Care, Protection and Justice Act criminalized child trafficking, the existing legal framework that covered trafficking in persons was weak. It stated that the Law Commission had proposed the enactment of new legislation in that regard and the bill should have been submitted to Parliament in September 2014.[69]

36. HR Committee expressed concern about the prevalence of trafficking in persons, the lack of available official data and the delays in adopting specific legislation on trafficking. It deeply regretted the lack of adequate programmes for victims of trafficking. It stated that Malawi should expedite the adoption of a law on trafficking in persons, which provided for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims, and that it bring alleged perpetrators to justice and ensure protection, assistance, rehabilitation and compensation for all victims.[70]

C. Administration of justice, including impunity and the rule of law

37. HR Committee was concerned about the high number of persons in pretrial detention; that pretrial detainees were not always held separately from convicted prisoners; and that the alternative measures to detention were not adequately applied in practice. It stated that Malawi should reduce the number of persons in pretrial detention; ensure that convicted persons were not detained with pretrial detainees; and increase the use of non-custodial penalties.[71]

38. HR Committee was concerned about the lack of sufficient judges, judicial officers and lawyers to address the backlog of court cases, and that the Legal Aid Office was under-resourced and understaffed. It stated that Malawi should develop a national policy for reducing the backlog of cases; strengthen the appeals procedure; increase the number of judges and judicial officers, in particular in rural areas; and implement the Legal Aid Act and the Legal Education and Legal Practitioners Act.[72]

39. HR Committee was concerned about reports of extrajudicial killings for which the alleged perpetrators had not yet been prosecuted or the prosecutions had not progressed expeditiously. It stated that Malawi should prosecute all alleged perpetrators of extrajudicial killings; expeditiously complete all prosecutions that had been initiated; and protect, rehabilitate and compensate the victims.[73]

40. UNCT stated that in sexual violence cases, women were unwilling to testify to their attacks because of the stigma associated with such attacks. It called for the formulation of special rules for court proceedings in cases of sexual violence. UNCT also stated that a key challenge to successfully prosecuting sexual violence offences was the requirement that the testimony of the victim be corroborated. In most cases, there was no corroborating evidence and Malawi did not have DNA testing facilities.[74]

41. UNCT stated that Malawi had made progress in strengthening the juvenile justice system: six child-friendly courts were operational in Blantyre, Zomba, Mzuzu, Nkhata-bay, Salima and Mulanje; and 37 magistrates, 39 police prosecutors, 37 probation officers and 34 court clerks had been trained in juvenile justice. It considered that recommendation 102.37 made during the 2010 review, relating to juvenile justice, had been implemented.[75]

42. HR Committee was concerned that the age of criminal responsibility for children, which was set at 10 years in 2010, was still too low. It stated that Malawi should raise the age of criminal responsibility for children in accordance with international standards.[76]

D. Right to privacy, marriage and family life

43. HR Committee was concerned about searches without warrants and stated that Malawi should consider repealing section 35 of the Police Act in order to prevent arbitrary searches and interference with liberty and privacy.[77]

44. HR Committee stated that Malawi should explicitly provide by law that, in cases of divorce, courts fully recognize the value of non-financial contributions with regard to the acquisition of property during marriage.[78]

45. HR Committee was concerned that consensual same-sex sexual activity among consenting adults was still criminalized and about reports of violence against LGBTI persons. It stated that Malawi should review its legislation so as to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination, and to repeal the provisions that criminalized homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code). It also stated that Malawi should prosecute the perpetrators of violence against LGBTI persons; compensate the victims; and ensure that public officials refrained from using language that might encourage such violence.[79]

E. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

46. HR Committee noted with satisfaction that Malawi had repealed section 46 of the Penal Code that empowered the Minister of Information to ban newspapers. However, it remained concerned about reports of journalists and human rights defenders being harassed and/or arrested by police. It stated that Malawi should ensure protection for journalists and human rights defenders from harassment and arbitrary arrest, prosecute those responsible and compensate the victims.[80]

47. In 2012, the Special Rapporteur on the situation of human rights defenders expressed deep concern about the situation of human rights defenders in Malawi, particularly with regard to restrictions on their rights to freedom of assembly and freedom of expression. She noted that human rights defenders who had exercised those rights had been subjected to violent attacks by security forces and other actors, which had resulted in injuries and even death.[81]

48. HR Committee noted that the Commission of Inquiry set up to investigate the handling of demonstrations in July 2011 had presented its findings in July 2012. It stated that Malawi should expeditiously prosecute all persons allegedly responsible for arrests, killings and ill-treatment in relation to the demonstrations and adequately compensate the victims.[82]

49. HR Committee stated that Malawi should guarantee the freedom of assembly and association, including by removing obstacles to the right to demonstrate and by applying the 48-hour notification rule.[83]

F. Right to work and to just and favourable conditions of work

50. The Special Rapporteur on the right to food stated that Malawi had one of the lowest national minimum wages worldwide, as a consequence of several decades of policies designed to produce cheap labour for the emerging estate sector by depressing the price of labour.[84] He recommended that the Government: reform the national minimum wage to ensure for all workers, including casual/seasonal workers, a living wage, in line with

international human rights law; ensure that collective bargaining and the right to organize were respected in all sectors; and strengthen oversight of compliance with labour legislation, including through an adequately staffed and empowered labour inspectorate.[85]

51. HR Committee was concerned about reports that Rastafarians did not enjoy equal access to employment. It stated that Malawi should ensure equal access to employment for Rastafarians.[86]

G. Right to social security and to an adequate standard of living

52. The Special Rapporteur on the right to food indicated that Malawi was among the poorest countries in the world, ranking 170th of 186 surveyed countries in the 2013 Human Development Index. He noted that the more than half of the population who live below the poverty line had seen little or no improvement in their situation over the past decade. One quarter of Malawians were considered "ultra poor", with an income below the estimated cost of food that would provide the minimum daily recommended calorie intake. Inequality had worsened;[87] and one third of the population was food insecure, with disrupted eating patterns and reduced food intake.[88] The Special Rapporteur also noted that Malawi had one of the highest population growth rates in the region; its population was expected to triple to over 40 million by 2040.[89] The Special Rapporteur advised that the country's main agriculture support programme, the Farm Input Subsidy Programme (FISP), was in need of reform.[90]

53. The Special Rapporteur on the right to food recommended that the Government, inter alia: review and reform current agricultural input support programmes, in particular the FISP, which was aimed at supporting smallholder farmers and addressing food insecurity;[91] ensure that the legal framework for the governance of land provided adequate protection against land grabbing and forced displacement, and gave specific attention to the specific obstacles faced by women;[92] scale up school feeding programmes to achieve full national coverage, and source food for such programmes locally to create synergies with efforts to promote smallholder food production;[93] scale up the social protection scheme of cash transfers to move away from donor-funded and time-bound projects towards a comprehensive system providing for a standing national social protection floor, while strengthening current mechanisms of community-based targeting.[94]

54. The Special Rapporteur on the right to food also observed that HIV/AIDS had resulted in a high number of "orphaned elderly", who lacked the support of other family members, and of orphaned children being cared for by their grandparents or living in child-headed households.[95]

55. UNCT stated that in 2012/13, almost 2 million people were classified as food insecure and in 2013/14, about 1.85 million were classified as food insecure, despite a national surplus of maize production.[96]

H. Right to health

56. HR Committee was deeply concerned about the high rates of maternal mortality, the general criminalization of abortion and the high percentage of unsafe abortion-related maternal deaths. While noting that a special commission had been set up in 2013 to review the abortion law, it was concerned about the excessive delays in reforming the law. It stated that Malawi should urgently review its legislation on abortion and provide for additional exceptions, such as in cases of pregnancy resulting from rape or incest, and when the pregnancy posed a risk to the health of the woman The law should make reproductive

health services accessible for all women and adolescents, including in rural areas, and reduce maternal mortality.[97]

57. UNCT stated that the major causes of maternal deaths included haemorrhage, hypertension, sepsis and unsafe abortions. It mentioned the limited access to emergency obstetric care services; the unmet need for family planning; and the limited access to quality sexual and reproductive health information and services for women and girls, especially in rural and hard-to-reach areas. As a result of the high rate of teenage pregnancy, there was a large number of cases of obstetric fistula.[98]

58. HR Committee stated that Malawi should reduce teenage pregnancies by providing adequate sexual and reproductive health services.[99]

59. The Special Rapporteur on the right to food noted that levels of malnutrition were alarmingly high: about half of all children under 5 years of age showed signs of chronic malnutrition; an estimated 48 per cent were too short for their age (stunted); 30.6 per cent weighed too little for their age (underweight); and 11.4 per cent weighed too little for their height (wasted).[100]

60. HR Committee was concerned that LGBTI persons did not enjoy effective access to health services. It stated that Malawi should guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.[101]

61. UNCT stated that the criminalization of consensual same sex relations, societal stigma and discrimination had a detrimental impact on the enjoyment of the right to health. LGBTI persons were often not included in public health and support initiatives, such as education programmes or the provision of disease and infection prevention and care, and were denied access to necessary information, support and services to make informed decisions and to reduce their vulnerability to HIV.[102]

62. UNAIDS reported that since 2010, the number of new HIV infections in Malawi had decreased by 41 per cent.[103] UNCT also reported a decline in the HIV epidemic and that Malawi was on track to achieve both goal 6 (Combat HIV/AIDS, malaria and other diseases) and goal 4 (Reduce child mortality) of the Millennium Development Goals.[104]

I. Right to education

63. UNESCO stated that Malawi did not offer compulsory and free education for all.[105] It recommended that Malawi be encouraged to make primary education free and compulsory.[106]

64. HR Committee was concerned about reports that Rastafarian children were sometimes denied access to schools. Malawi should ensure equal access to education for Rastafarians.[107]

65. UNCT stated that despite the abolition of school fees in 1994, over 10 per cent of eligible children did not attend school. Net enrolment rates were high in grades 1 and 2 for both boys and girls, but completion rates for primary education were low at 26 per cent on average and only 16 per cent for girls; class sizes were huge, with a teacher-pupil ratio of 1:107 pupils. UNCT stated that the serious shortage of classrooms forced many children to learn outside in the open; only 20 per cent of children attending school had access to furniture; and teaching and learning materials were in short supply.[108]

66. UNESCO stated that Malawi had not taken sufficient measures to promote human rights education.[109] It recommended that Malawi be encouraged to further promote human rights education.[110]

67. UNCT stated that gender parity in enrolment in secondary education had not been achieved and was unlikely to be achieved by the Millennium Development Goal target date of 2015.[111]

J. Cultural rights

68. UNESCO stated that, as a party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Malawi should be encouraged to fully implement the provisions that promoted access to and participation in cultural heritage and creative expressions, which were conducive to implementing the right to participate in cultural life.[112]

K. Persons with disabilities

69. HR Committee was concerned about delays in implementing the Disability Act and the absence of programmes addressing the needs of persons with albinism. It stated that Malawi should allocate sufficient resources to the implementation of the Disability Act; ensure effective remedies in cases of violation of its provisions; and implement programmes specifically addressing the needs of persons with albinism.[113]

L. Migrants, refugees and asylum seekers

70. HR Committee was concerned that Malawi had not granted refugee status to any asylum seeker since 2011. It was also concerned about reports that persons in need of international protection had been denied entry. It stated that Malawi should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection received appropriate and fair treatment, and that decisions on refugee status determination were dealt with expeditiously.[114]

71. UNHCR stated that the Eligibility Committee had not considered applications for refugee status for about two and a half years. It recommended that Malawi resuscitate the refugee eligibility determination process and hold refugee eligibility determination sessions on a regular basis, at least once a month.[115]

72. UNHCR welcomed the compulsory universal birth registration process launched in 2012, and recommended that Malawi consider issuing birth certificates to children of refugees and asylum seekers born on its territory.[116]

M. Right to development, and environmental issues

73. In 2014, the Special Rapporteur on the right to food noted that the 1994 Constitution of Malawi referred to access to food as part of the human right to development, and committed the State to "take all necessary measures for the realization of the right to development". Consistent with the status of the right to food in domestic law and with the international obligations of the country, Malawian courts had recognized the justiciability of economic, social and cultural rights, including the right to adequate food.[117]

74. The Special Rapporteur on the right to food indicated that, partly as the result of strong demographic growth, Malawi's natural resources were under enormous pressure. While land degradation (aggravated depletion of soil fertility) was the most worrying sign

of the ecological crisis in Malawi, the country was also prone to natural disasters, in particular floods, droughts and dry spells. Droughts and floods pushed, on average, approximately 265,000 more people into poverty each year and caused an annual average loss of 1.7 per cent of gross domestic product.[118]

Notes

[1] Unless indicated otherwise, the status of ratification of instruments listed in the table may be found on the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, http://treaties.un.org/. Please also refer to the United Nations compilation on Malawi from the previous cycle (A/HRC/WG.6/9/MWI/2).

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and ICPPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; ICPPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; ICPPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: ICPPED, art. 30.

[4] 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and 1954 Convention relating to the Status of Stateless Persons.

[5] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.

[6] International Labour Organization Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

[7] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

[8] International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169); and Domestic Workers Convention, 2011 (No. 189).

[9] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.

[10] CCPR/C/MWI/CO/1/Add.1, para. 11.

[11] UNHCR submission for the UPR of Malawi, p. 2.

[12] Ibid., p. 2.

[13] Ibid., p. 4.

[14] UNESCO submission for the UPR of Malawi, para. 17.

[15] See A/HRC/16/4.

[16] UNCT submission for the UPR of Malawi, para. 4; see also A/HRC/16/4, para. 102.5.

[17] UNCT submission, para. 4.

[18] Ibid., para. 4; see also A/HRC/16/4, para 102.4.

[19] UNCT submission, para. 4.

[20] Ibid., para. 20.

[21] CCPR/C/MWI/CO/1/Add.1, para. 25. See also letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.

[22] A/HRC/25/57/Add.1, para. 83 (a).

[23] UNHCR submission, p. 2.

[24] UNESCO submission, para. 25.

[25] Ibid., para. 35.

[26] CCPR/C/MWI/CO/1/Add.1, para. 22.

[27] Ibid., para. 5.

[28] According to article 5 of the rules of procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation, the classifications for accreditation used by the Sub-Committee are: A: Voting Member (fully in compliance with each of the Paris Principles); B: Non-Voting Member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination); C: No Status (not in compliance with the Paris Principles).

[29] For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/27/40, annex.

[30] Pending its re-accreditation, the NHRI retains its A status.

[31] CCPR/C/MWI/CO/1/Add.1, para. 6.

[32] ICC Sub-Committee on Accreditation Report – October 2014, pp. 20-21.

[33] A/HRC/25/57/Add.1, para. 83 (c).

[34] UNCT submission, para. 8; see also A/HRC/16/4, para. 102.11.

[35] UNCT submission, para. 8.

[36] The following abbreviations are used in UPR documents:

CERD	Committee on the Elimination of Racial Discrimination;
CESCR	Committee on Economic, Social and Cultural Rights;
HR Committee	Human Rights Committee;
CEDAW	Committee on the Elimination of Discrimination against Women;
CAT	Committee against Torture;
CRC	Committee on the Rights of the Child;

CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Committee on the Rights of Persons with Disabilities;
CED	Committee on Enforced Disappearances;
SPT	Subcommittee on Prevention of Torture.

[37] CCPR/C/MWI/CO/1/Add.1, para. 29.
[38] CEDAW/C/MWI/CO/6, para. 52.
[39] CEDAW/C/MWI/CO/6/Add.1.
[40] See letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.
[41] For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
[42] UNCT submission, para. 12.
[43] A/HRC/25/57/Add.1, para. 68.
[44] Ibid., para. 83 (b).
[45] CCPR/C/MWI/CO/1/Add.1, para. 7; also UNCT submission, para. 21.
[46] UNCT submission, para. 18.
[47] CCPR/C/MWI/CO/1/Add.1, para. 20.
[48] UNCT submission, para. 13.
[49] CCPR/C/MWI/CO/1/Add.1, para. 11.
[50] Ibid., para. 13.
[51] A/HRC/WGAD/2012/15, para. 52.
[52] Ibid., para. 56.
[53] UNCT submission, para. 30.
[54] Ibid., para. 30.
[55] Ibid., para. 30.
[56] CCPR/C/MWI/CO/1/Add.1, para. 16.
[57] A/HRC/25/57/Add.1, para. 70, referring to High Court of Malawi Lilongwe District Registry, Constitutional case No. 15 of 2007, *Masangano* v. *Attorney General, Minister of Home Affairs and Internal Security, and Commissioner of Prisons*, ruling of 19 February 2009.
[58] A/HRC/25/57/Add.1, para. 71.
[59] Ibid., para. 83 (n).
[60] CCPR/C/MWI/CO/1/Add.1, para. 14.
[61] UNCT submission, para. 31.
[62] CCPR/C/MWI/CO/1/Add.1, para. 8.
[63] Ibid., para. 8.
[64] Ibid., para. 25.
[65] Ibid., para. 8.
[66] Ibid., para. 24.
[67] Ibid., para. 26.
[68] Ibid., para. 26.
[69] UNCT submission, para. 36.
[70] CCPR/C/MWI/CO/1/Add.1, para. 17.
[71] Ibid., para. 15.
[72] Ibid., para. 18; see also UNCT submission, para. 37.
[73] CCPR/C/MWI/CO/1/Add.1, para. 12; also UNCT submission, para. 26.
[74] UNCT submission, para. 35.
[75] Ibid., para. 38.
[76] CCPR/C/MWI/CO/1/Add.1, para. 18.
[77] Ibid., para. 20.
[78] Ibid., para. 7.
[79] Ibid., para. 10; also UNCT submission, para. 14.
[80] CCPR/C/MWI/CO/1/Add.1, para. 22.
[81] A/HRC/19/55/Add.2, para. 225.

[82] CCPR/C/MWI/CO/1/Add.1, para. 23.
[83] CCPR/C/MWI/CO/1, para. 17.
[84] A/HRC/25/57/Add.1, para. 44.
[85] Ibid., para. 83 (e) –(g).
[86] CCPR/C/MWI/CO/1/Add.1, para. 21.
[87] A/HRC/25/57/Add.1, para. 9.
[88] Ibid., para. 11.
[89] Ibid., para. 5.
[90] Ibid., p. 1.
[91] Ibid., para. 83(d).
[92] Ibid., para. 83(i).
[93] Ibid., para. 83(k).
[94] Ibid., para. 83 (m).
[95] Ibid., para. 63.
[96] UNCT submission, para. 44.
[97] CCPR/C/MWI/CO/1/Add.1, para. 9; see also letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.
[98] UNCT submission, para. 23.
[99] CCPR/C/MWI/CO/1/Add.1, para. 9.
[100] A/HRC/25/57/Add.1, para. 10.
[101] CCPR/C/MWI/CO/1/Add.1, para. 10.
[102] UNCT submission, para. 16.
[103] UNAIDS, The Gap Report 2014, p. 30.
[104] UNCT submission, para. 25.
[105] UNESCO submission, para. 32.
[106] Ibid., para. 33.4.
[107] CCPR/C/MWI/CO/1/Add.1, para. 21.
[108] UNCT submission, para. 45.
[109] UNESCO submission, para. 32.
[110] Ibid., para. 33.3.
[111] UNCT submission, para. 46.
[112] UNESCO submission, para. 37.
[113] CCPR/C/MWI/CO/1/Add.1, para. 19.
[114] Ibid., para. 27.
[115] UNHCR submission, p. 3.
[116] Ibid., p. 3.
[117] A/HRC/25/57/Add.1, paras. 14 and 15.
[118] Ibid., paras. 6 and 7.